REMARKS

Reconsideration and allowance are respectfully requested.

Claims 1-22 are pending. Applicants elect with traverse Group I (claims 1-13 and 19-22) for examination on the merits. With regard to the further requirement for election of a single "insulin sensitizer" and a single "peptide fraction" of the protein hydrolysate (n.b. the fraction contains many peptides and may contain at least one free amino acid), "minerals preferably chromium" and "a protein hydrolysate containing a high proportion of small peptides, i.e., peptides with a molecular weight below 500Da" are elected with traverse. See support for the latter elections at page 10, line 24, and page 8, lines 27-28, respectively, of the specification. Claims 1-22 read on at least one of the elected insulin sensitizer or peptide fraction. Applicants reserve the right to prosecute the non-elected subject matter in a further patent application.

The Examiner stated at page 5 of the Action that for members of a Markush group to have unity of invention, all members must have a common core structure or belong to an art recognized class. Consistent with his admission, it appears improper to require restriction among members of the genus of (i) insulin sensitizers or (ii) peptide fractions. Both are art recognized classes as shown by a search of the USPTO patent database on October 13, 2006: "insulin sensitizer" identified its use in 205 patents and "peptide fraction" identified its use in 380 patents. Clearly these are art recognized classes. No common core structure is required because no prior art has been cited to establish that "insulin sensitizers" and "peptide fractions" are not special technical features of the invention.

Moreover M.P.E.P. § 803.02 (Markush Claims) does not apply to generic limitations such as insulin sensitizers and peptide fractions. Only dependent claim 11 recites a Markush group to provide examples of insulin sensitizers; no Markush group is recited in any claim to provide examples of peptide fractions. But independent claim 1 recites "an insulin sensitizer" and "a peptide fraction" as generic limitations. Therefore, the appropriate requirements that must be satisfied for restriction to be proper are found in M.P.E.P. § 806.04 (Genus and/or Species Inventions) instead of M.P.E.P. § 803.02.

Applying either provision to the pending claims, restriction between either insulin sensitizers or peptide fractions is not required.

In the alternative, claim 1 is a generic or linking claim and examination should proceed under the provisions of M.P.E.P. § 809. Although the inventions identified by the Examiner are separately patentable, both the need for compact prosecution and the public interest would be served by examination of all claims in a single application. Therefore, dependent claims 1-14 and 16-22 should be examined in this application.

Furthermore, under the Commissioner's Notice of March 26, 1996 (1184 OG 86) implementing the Federal Circuit's decisions of *In re Ochiai*, 37 USPQ2d 1127 (1995) and *In re Brouwer*, 37 USPQ2d 1663 (1996), Applicants request rejoinder of claims 14 and 16-18 upon an indication that product claim 1 is allowable.

Applicants submit that the claims are in condition for allowance and earnestly solicit an early Notice to that effect. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

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